Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

NO. 78-720

BANK OF HENDERSONVILLE,
Petitioner

v.

RED BARON FLYING CLUB, INC.,
Respondent

RESPONSE TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

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RESPONSE TO MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF

Comes now the Red Baron Flying Club, Inc., respondent herein, and asks the Court to deny the Motion of the Aircraft Finance Association for leave to file an amicus brief in this cause and for grounds to suggest that the Court to deny such motion respectfully states and shows to the Court that:

1. The only issue before the Tennessee Supreme Court in the case at bar was whether or not a duly perfected inventory security interest in an aircraft survives a sale by the dealer to a purchaser in ordinary course of business. The applicant for intervention attempts to set up a claim of conflict between the Federal Aviation Act of 1958 and the provisions of the Uniform Commercial Code. There is no such conflict because the FAA Act of 1958 provides only for the place of filing or perfecting a security interest and is silent as to the effect of such filing which is left to the jurisdiction of the several states.

2. The general rules for all commercial transactions in the United States and the effect of various activities by parties with respect to security interests are set out in the Uniform Commercial Code and the momentum of the several states has been toward greater consistency and uniformity. The position of the motion of the proposed intervenor would be disruptive of that momentum for uniformity.

3. Contrary to the position taken in paragraph 2 of the proposed intervenor's motion, there is no issue of "priority" whatsoever. The issue is the validity of an inventory security interest as against the rights of a purchaser in ordinary course of business.

4. The respondent, The Red Baron Flying Club, Inc., a small private club which owned one plane, should not be compelled to bear the financial burden of the necessity to respond to pleadings filed by organizations which are not parties to the litigation.

WHEREFORE, the Red Baron Flying Club, Inc. respectfully moves the Court to deny the application of the Aircraft Finance Association to intervene in this cause.

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BRIEF OF RED BARON FLYING CLUB, INC. IN OPPOSITION TO BRIEF TENDERED IN BEHALF OF AIRCRAFT FINANCE ASSOCIATION

Red Baron Flying Club, Inc. respectfully prays that this Court decline to issue any writ of certiorari to review the judgment of the Tennessee Supreme Court entered in this cause on July 31, 1978.

QUESTION PRESENTED

Movant and the original petitioner repeatedly attempt to express the question in this case as one of "priority." Priority is not the issue. The issue is whether an inventory security interest in an aircraft is *valid* as against a purchaser in ordinary course of business from a dealer in aircraft. It is worth noting that in no other field of commerce is an inventory security interest "valid" as against a purchaser in ordinary course of business.

ISSUE SUCCINCTLY STATED

The issue succinctly stated is:

WHETHER AN AIRCRAFT DEALER'S INVENTORY FLOOR PLAN SECURITY INTEREST, DULY PERFECTED UNDER THE FAA ACT OF 1958, SURVIVES A SALE TO A PURCHASER IN ORDINARY COURSE OF BUSINESS FROM THAT DEALER.

ISSUE STATED AS A LEGAL QUESTION

Stated in terms of the legal question, the issue is:

WHETHER THE FAA ACT OF 1958 PREEMPTS STATE LAW (THE UNIFORM COMMERCIAL CODE,

TENNESSEE CODE ANNOTATED §47-9-307) WHICH GIVES A BUYER IN THE ORDINARY COURSE OF BUSINESS GOOD TITLE EVEN THOUGH THERE WAS A PERFECTED SECURITY INTEREST IN THE AIRCRAFT IN THE HANDS OF THE DEALER.

STATEMENT OF FACTS

The facts are uncontroverted. Mid-South Aviation, Inc., an aircraft dealer, sold to Red Baron Flying Club, Inc. (Respondent herein) the subject aircraft out of its (Mid-South's) stock of several aircraft. The respondent, Red Baron Flying Club, Inc., was a "purchaser for value in the ordinary course of business" or a "bona fide purchaser for value." The airplane was paid for by a cashier's check. At the time of the sale, the Bank of Hendersonville (petitioner herein) held a floor-plan or inventory security interest upon a number of Mid-South's (the dealer) aircraft including the subject plane. Mid-South failed to satisfy the inventory security interest of petitioner. Mid-South subsequently was adjudicated a bankrupt.

The Bank of Hendersonville initiated this cause of action to enforce its lien against the subject aircraft. Red Baron claims the benefits of the rights of a purchaser for value in the ordinary course of business under the Uniform Commercial Code. The term "puchaser for value in the ordinary course of business" is defined in Tennessee Code Annotated at 47-1-201(q) and the rights of a "purchaser for value in ordinary course of business' are set out in Tennessee Code Annotated 47-9-307.

The security interest of the Bank of Hendersonville was, at all pertinent times, duly recorded with the FAA Aircraft Registry in Oklahoma City in accordance with 49 U.S.C. §§1401-1406.

The United States Congress by the enactment of the Federal Aviation Act of 1958 (48 U.S.C. §§1401-1406), essentially a re-enactment of the 1938 Civil Aeronautics Act, created a central place in which a security interest in a highly mobile piece of equipment such as an airplane could be filed. This enactment in no wise changed the *effect* of the perfection. The Federal Aviation Act is absolutely silent as to many aspects of secured transactions. It contains no procedures for foreclosure. It is silent as to priority of claims and says nothing about the ultimate effect of recordation as to third parties. Under the Uniform Commercial Code, Article IX is the section relating to secured transactions, Article IX, Section 104 excludes from the effect of the Code so much of certain transactions as fall under certain federal acts. The official code comment to T.C.A. §47-9-104(a) says it clearly:

> "BUT TO THE EXTENT THAT THE FEDERAL AVIATION ACT DOES NOT REGULATE THE RIGHTS OF PARTIES TO AND THIRD PARTIES AFFECTED BY SUCH TRANSACTIONS, SECURITY INTERESTS IN AIRCRAFT REMAIN SUBJECT TO THIS ARTICLE."

As was set out in respondent's original brief, there are currently eleven reported cases that involve the precise issues as set out in the instant case. Intervenor attempts to cite one additional case. This case is *Richard O'Neill v. Barnett Bank of Jacksonville*, a case decided by the District Court of Appeals of Florida for the First District on June 30, 1978 and reported at 360 So.Rptr.2d, p.150. The case is easily distinguishable in that the aircraft involved in the O'Neill case was not a part of the inventory of a dealer. O'Neill ". . . knew it was not a part of (the dealer's) sales inventory, he did not purchase it from (the dealer's) sales inventory and . . . O'Neill knew that (the

dealer's) principal business was fixed base operation, not the sale of aircraft." (At page 152).

> To put it in the exact words of the Florida court:
> "O'Neill was not a buyer in the ordinary course of business as required by Section 671.201(9), therefore Section 679.307(1) is not applicable to this case." (At page 152.)

An argument of estoppel was offered on behalf of O'Neill. The Florida Court summed it up in these words:

> "O'Neill's estoppel argument is without merit because Section 672.403, Florida Statutes (1975), applies only to financing transactions which involve floor planning of inventory. Barnett (the bank) did not floorplan the aircraft in litigation nor was O'Neill a buyer in ordinary course." (At page 153.)

In the instant case, by written stipulation, the Red Baron Flying Club, Inc. was a purchaser in the ordinary course of business of the subject aircraft. In another paragraph of the same stipulation, the Red Baron Flying Club, Inc. is referred to as a "bona fide purchaser for value."

Another distinguishing feature between the instant case and the *O'Neill* case is in the *O'Neill* case the aircraft was held not to be a part of the dealer's sales inventory. In the instant case, by stipulation, it was agreed that the subject aircraft was a part of the dealer's inventory. The stipulation filed in this cause is the Appendix to this Brief.

Thus, the O'Neill case has no application to the instant situation.

There is no argument but that any state which so chooses can "subordinate" its own statutes and laws even to the non-existent provisions of some federal statute.

California has apparently elected such a course in *Dowell v. Beech Acceptance Corporation, Inc.*, 3 Cal.3d 544, 91 Cal.Rptr. 1, 476 P.2d 401 (Cal. 1970) *cert. den.* 404 U.S 823, 92 S.Ct. 45, 30 L.Ed2d 50 (1971) Tennessee has elected the far more sensible rule of uniformity and consistency in commercial transactions and has followed the provisions of the Uniform Commercial Code on points at which the Federal Aviation Act of 1958 is silent.

The application for intervention also cites several cases at the bottom of page 9 in Footnote 1 as supposedly illustrative of the conflict in decisions. The cases supposedly supporting the position contrary to the position taken by the Supreme Court of the State of Tennessee are not in point at all. These cases include *In Re Veterans Express Co.*, 76 F.Supp. 684, a 1948 case relating to the relative priority and seniority as between a mechanic's lien claimant and a claim of the United States arising out of a chattel mortgage taken by the United States as a part of the purchase price of aircraft sold by the United States to the War Assets Administration which said chattel mortgages were recorded in accordance with the Civil Aeronautics Act of 1938 when the repair work was done on the aircraft after the recordation of the chattel mortgages. The case had nothing whatsoever to do with a purchaser in ordinary course of business or the question of whether or not an inventory security interest survives a sale to a purchaser in ordinary course of business. The next case cited is the case of *Marsden v. Southern Flight Service, Inc.*, 227 F.Supp. 411 (M.D.N.C. 1961). In that particular case, the dealer sold the subject aircraft to a purchaser who totally failed and neglected to record the conveyance and transfer of the aircraft into said purchaser's name. The aircraft was left in the possession of the dealer, and the dealer used the aircraft as security to obtain a fradu-

lent and improper loan to the dealer by a third party. The position in this case was exactly the reverse of the instant case. The lending institution relied upon the public record which showed the aircraft still to be owned by the dealer because the purchaser had failed to record the transfer to the purchaser. The loss was caused by the purchaser's failure to record the transfer.

The next case cited by the proposed intervenor is the case of *Dawson v. General Discount Corporation*, 82 Ga.App. 29, 60 S.E.2d 653 (1950). This is a case in which evidentiary issues are the primary concern. However, it does not appear that the issue is a conflict between a purchaser in ordinary course of business and a secured party claiming a security interest in the inventory of a dealer.

The last two authorities cited by proposed intervenor are two "conventions" entered into by the United States. These authorities are the Convention on International Civil Aviation, Chicago 1944, and the Convention on International Recognition of Rights in Aircraft. The 1944 convention can be found in a volume cited as Treatises and Other International Agreement of the United States of America, 1776-1949, Vol. 3, beginning at page 944. The preamble to this convention reads as follows:

"

PREAMBLE

WHEREAS, the future development of international civil aviation can greatly help to create and preserve friendship and understanding among the nations and peoples of the world, yet its abuse can become a threat to the general security; and

WHEREAS, it is desirable to avoid friction and promote that cooperation between nations and peoples upon which the peace of the world depends;

THEREFORE, the undersigned governments having agreed on certain principles and arrangements in order that *international civil aviation* may be developed in a safe and orderly manner and that *international air transport services* may be established on the basis of equality of opportunity and operated soundly and economically;

Have according concluded this Convention to that end." (Emphasis added)

A full reading of that Convention makes it obvious that, although it makes reference in passing to other civil aircraft, the treaty is directed toward the regulation of the international operation of air carriers and airlines. In no way does it address security interests in aircraft.

The second authority cited by amicus counsel, the Convention of 1948 is referred to by amicus counsel as "the Mortgage Convention." In no place does such a title appear. The treatise can be found in the volume entitled "United States Treaties and Other International Agreements, Volume 4, Part II, 1963."

The attention of the Court is particularly directed to Article II(2) of this convention. It reads as follows:

"(2) Except as otherwise provided in this Convention, the effects of the recording of any right mentioned in Article I, Paragraph (1) with regard to third parties shall be determined according to the law of the Contracting State where it is recorded."

In sum, this particular convention in fact recognizes the local laws of the signatories to the convention as controlling the rights of third parties.

The most exhaustive treatise on interests in aircraft is the treatise called *Sigman, "The Wild Blue Yonder: Interests in Aircraft Under Our Federal System,"* 46 So. Cal.L. Rev. 316 (1973). This treatise not only summarizes the cases exactly in point with the instant case but all of the analogous situations. Many of the leading cases were decided subsequent to the publication of the *Sigman* treatise. It might, perhaps, aid the Court to see the reasoning of various courts in a small number of cases identical to the instant case. Each of the identical cases were decided subsequent to the aforesaid *Sigman* treatise.

In *Idabell National Bank v. Tucker*, Okla.App. 1975, Cert. denied by Okla. Sup. Ct., the title and right of a purchaser in ordinary course of business was held to be superior to that of a bank holding a prior recorded mortgage from the dealer. After quoting applicable and persuasive portions of the legislative history of the U.S.C.A. §1403, the Oklahoma Court adopts the language of *Texas National Bank of Houston v. Aufderheide*, 235 FSupp. 599 (E.D. Ark. 1964), as follows:

> "Ordinarily, when a person goes into a merchant's place of business to make a purchase, whether it be of an automobile, a television set, a washing machine, or a pound of nails, the purchaser ought to have the right to assume that the merchant has a right to sell the commodity in question and should not be required to make a [record] search before purchasing or to see to it that the merchant obtains a valid release of the item from a bank floor plan before delivering it to the purchaser and receiving his money or obligation. The Court sees no reason why that right should not extend to the purchaser of an airplane who buys it from a recognized dealer from a regular inventory or display and in the ordinary course of business."
>
> 544 P.2d, p. 1291

The case of *Haynes v. General Electric Credit Corporation*, U.S.D.C. W.D. Va., March 8, 1977, 432 F.Supp. 763, 22 U.C.C. Reporting Service 514, is one of the most recent cases specifically on point. It makes a thorough study of the relationship between the Uniform Commercial Code and the Federal Aviation Act of 1958, as well as of all the prior cases including the *Dowell* case. Some of the points touched upon in the *Haynes* case are precisely in point with the instant case. The opinion begins with these words:

> "This action presents the important question of whether the system of recordation of title to aircraft under §503 of the Federal Aviation Act of 1958, 49 U.S.C. §1403, displaces and preempts state law that would otherwise govern on priorities of lien and title interests in aricraft. More specifically, *the Court must determine whether congress intended by enactment of the aforementioned statute to affect priorities existing under state law between a prior security holder and a subsequent buyer in the ordinary course of business.*" (at page 763—emphasis ours)

There was no dispute of the facts. Haynes bought the airplane as purchaser in the ordinary course of business from MD, a retail dealer in aircraft. GECC was financing the airplane as part of the inventory for MD. Haynes seeks a determination that he was purchaser in ordinary course of business and, therefore, took free and clear of the inventory security interest. The Court went on to say:

> "Prior to purchasing the aircraft, Mr. Haynes did not search the records of the Federal Aviation Administration to determine the existence of any outstanding liens or security interests in the aircraft, nor did he have actual knowledge of the security interest." (At page 764)

The Court then discussed the applicable statutes and had this to say:

"While congress has the power to legislate in the field of aircraft conveyancing and to preempt state laws that would otherwise apply, the question in this action is the extent to which the Federal Aviation Act covers an area of legislation also covered by state law. After carefully reviewing the matter, the Court finds that congress did not intend by adoption of the cited recordation procedure to displace state laws that would otherwise govern priorities of lien and title interests in aircraft. The very language of the statute seriously undermines any attempt to characterize the act as completely preempting state laws on secured transactions. The statute says that no interest shall be *valid* in the absence of federal recordation, but the act is silent on the issue of priorities between various lienholders." (At page 765, emphasis in the original)

In the *Haynes* case, GECC raised exactly the same issue now being offered by the petitioner, Bank of Hendersonville. The argument was to the effect that Article 9, §104 specifies ". . . that the U.C.C. does not apply 'to a security interest subject to any statute of the United States.'" The Court's response was the following:

"It must be noted, however, that the exclusionary language in the code applies only to the extent that 'the federal statute governs the rights of the parties to and third parties affected by transactions in particular types of property.' 'It specifically leaves open the possibility that Article 9 could be looked to for an answer in the event that the federal statue contains no relevant provision.'" (At page 766)

The Court then went into a study of the legislative history of the FAA act. The Court then made this comment:

"Because the Federal Aviation Act does not alter existing laws in this regard (priorities), it is apparent that the comprehensive federal statute envisioned by code commentators as totally preempting the field of conveyancing of interest in aircraft was never enacted into law." (At page 767)

The Court then discussed all of the prior cases concerning disputes between inventory secured parties and purchases in ordinary course of business. Citing *State Securities Co. v. Aviation Enterprises, Inc.*, 355 F.2d. 225, CA-10 (1966), this Court said:

". . . 'Courts have evolved the estoppel theory based on the maxim that, as between two innocent victims of fraud, the one who makes possible the fraud on the other should suffer.'"

State Securities at 229, Haynes at 767

The Court in *Haynes* then cited with approval the following language from *Aircraft Investment Corporation v. Pezzani & Reid Equipment Co.*, 205 F.Sup. 80 (E.D. Mich. 1962), which stated that:

"Plaintiff suggests that congress has preempted the entire field of conveyancing of interest in aircraft. This view is erroneous, notwithstanding *In Re: Veterans' Air Express Company*, 76 F.Supp. 684 (D. N.J. 1948), which contains dicta on which plaintiff relies. Congress has said only that until an instrument purporting to convey an interest in an aircraft is recorded in accordance with the Act, it is void as to third parties without notice. Upon Federal recordation, it is valid without further recording. In providing for the recordation of various instruments pertaining to transactions affecting title or interest in aircraft, congress has not impaired the existence and effectiveness of state laws creating and defining such instruments. Excepting the recording section of the Federal Aviation Act, the validity of the chattel mortgage here in question must be measured by the appropriate state law. [261 A.2d, at pg. 405, 205 F.Sup. at pg. 82]"

Haynes at 768.

Petitioner relies upon only one authority, *Dowell*. California appears to stand alone in its insistence that a customer who buys an airplane out of the stock of a dealer

must carry out a "title search" for recorded "floor plan" liens.

In conjunction with establishing a nation-wide filing system, the Federal Aviation Act has provided that a federally recorded aircraft interest shall be "valid as to all persons without further or other recordation, . . ." 49 U.S.C. §1403(d) (quoted above). In using the term "valid" within the context of establishing a nation-wide filing system, the Federal Act would appear to be using the term "valid" as a synonym for *perfection*. In similar fashion, the UCC has established a state-wide filing system for perfecting security interests in various forms of collateral. There is no dispute that the federal nation-wide aircraft security interest filing system preempts the state-wide UCC filing system as to perfection of a security interest in an airplane.

However, the Bank of Hendersonville argued in the lower court that in its use of the term "valid," the Federal Aviation Act intended to set forth a rule of both *perfection* and *priority*.

Apparently, the Bank's position is based upon its belief that the term "valid" is synonymous with the phrase "perfected and superior and prior to." However, merely to say that a recorded lien is "valid" is not to say that such lien is superior and prior to all other interests in the same security. Indeed, as a noted commentator has stated, "Recordation itself merely validates; it does not grant priority." Scott, "*Liens In Aircraft: Priorities.*" 25 J.Air L. & COM., 193, 203 (1958). The Petitioner's position ignores the distinction between "perfection" and "priority."

After arguing the invalid *premise* that the above-quoted provision of the Federal Aviation Act establishes a rule of

priority as well as a rule of perfection, the Bank of Hendersonville argues that this "Federal Rule of Priority" preempts the Tennesssee rules governing the priority of various security and ownership interests in collateral. This very same argument was specifically rejected in three recent decisions. *Industrial National Bank v. Butler Aviation International, Inc.*, 370 F. Supp. 1012 (Ed. N.Y. 1974); *Carolina Aircraft Corp. v. Commerce Trust Co.*, 298 So.2d 37 (Fla. App. 1974); *Southern Jersey Airways, Inc., v. National Bank of Secaucus*, 261, A.2d 299 (1970).

Petitioner has argued that, because airplanes are expensive some different rule should apply. Large earth-moving machinery is frequently more expensive than most airplanes. From the inventory of an equipment dealer, a clear title to such equipment can be conveyed by a dealer to a purchaser for value in ordinary course of business whether or not the claim of the inventory secured party is satisfied.

CONCLUSION

The Tennessee Court of Appeals summarized its position as follows:

> This Court prefers to follow the rule announced in all of the decisions (other than Dowell) that the rights of a purchaser from a dealer in ordinary course of business are superior to the holder of the lien upon a moving stock of planes in the hands of a dealer. There are a number of reasons why this decision is preferable.
>
> (1) The Uniform Commercial Code has brought uniformity and order to the field of commercial law. To graft a new class of exceptions upon the existing uniform law would reverse the wholesome intent and result of the law.
>
> (2) It is not reasonable to assume that Congress intended any such result where not clearly stated.
>
> (3) The proliferation of aircraft dealerships and aircraft purchases would be seriously impaired if the public were not allowd to trust dealers selling in ordinary course of business.
>
> (4) It is inequitable and unjust to allow a mortgagee to hold "secret liens" on chattels while authorizing the chattels to be exhibited for sale by a dealer to the deception and loss of the purchasing public.
>
> (5) Lien holders may protect themselves (if they deside by impounding the mortgaged planes in locked surroundings inconsistent with the free-sales situation of the stock of merchandise.

The Tennessee Supreme Court denied certiorari per curium.

To all of this, respondent can only add that, where the Federal law speaks, it preempts State law. Where the

Federal law is silent, the State law prevails. Traditionally, the courts of all states have guarded the rights of purchasers for value in ordinary course of business for many years and there is nothing in the Federal Aviation Act which justifies any change from that position.

Respondent respectfully asserts that the judgment of the Court of Appeals for the State of Tennessee and the judgment of the Supreme Court of the State of Tennessee was completely correct, the petition for certiorari should be denied, and the petition to intervene should be denied.

Respectfully submitted,

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OF COUNSEL:

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By: _____

IN THE CHANCERY COURT
FOR PUTNAM COUNTY, TENNESSEE
AT COOKEVILLE, TENNESSEE

BANK OF HENDERSONVILLE,	)	
	)	
Plaintiff,	)	
	)	
Vs.	)	NO. 1002
	)	
MID-SOUTH AVIATION, INC.,	)	
RED BARON FLYING CLUB, INC.,	)	
and CITIZENS BANK OF	)	
COOKEVILLE, TENNESSEE,	)	
	)	
Defendants.	)	

STIPULATION OF FACTS

This is a suit to determine the relative rights of a purchaser in ordinary course of business of an airplane and a bank which took a security interest in the airplane while it was still part of the inventory held for resale by an aircraft dealer who subsequently sold the airplane to the purchaser in ordinary course.

The Red Baron Flying Club, Inc., is a Tennessee corporation and is a club organized to let its members have access to airplanes which the club members fly.

Mid-South Aviation, Inc. was an aircraft dealer, incorporated under the laws of the State of Tennessee and having aircraft sales establishments at Nashville Metro Airport, Memphis International Airport and the Municipal Airport of Lafayette, Tennessee. Since the occurence of the events which are the subject matter of this litigation, Mid-South Aviation, Inc. has been declared bankrupt by the United States District Court for the Middle District of Tennessee.

On August 2, 1974, in the ordinary course of business, members of the Red Baron Flying Club selected from among the inventory of airplanes held for sale by Mid-South Aviation, Inc., a new Piper Cherokee Airplane. The club paid the full purchase price for the airplane and Mid-South Aviation, Inc., gave the club an

invoice and bill of sale to the airplane warranting title thereto. A copy of the invoice and the bill of sale are attached to this Stipulation as Exhibits Nos. 1 and 2.

Immediately after the purchase of the aircraft, the Red Baron Flying Club (on August 5, 1974) forwarded its bill of sale to the FAA in Oklahoma City to show evidence of the club's ownership of the aircraft.

Subsequently, it was discovered that the dealer, Mid-South Aviation, Inc. had double financed the airplane while said airplane was a part of its inventory. In the course of the purchase of the airplane by the Red Baron Flying Club as bona fide purchaser for value, one of the institutions which held an inventory security interest in the subject aircraft was apparently paid off. The other, the Bank of Hendersonville, plaintiff herein was not and subsequently instituted this suit.

When the Red Baron Flying Club, Inc. purchased the subject aircraft from the dealer, Mid-South Aviation, Inc., it financed the purchase through the Citizens Banks of Cookeville, Tennessee. However, since the date of the institution of this suit, the security interest of the said Citizens Bank of Cookeville, Tennessee, has been paid and satisfied in full. Therefore, the only remaining parties to this cause of action are the plaintiff, The Bank of Hendersonville and the Red Baron Flying Club, Inc.

The security interest of the Bank of Hendersonville is represented by a note and security agreement which bears the date of June 11, 1974, and the instrument was filed for record with the FAA Aircraft Registry in Oklahoma City, Oklahoma on June 25, 1974.

Defendant, The Red Baron Flying Club, Inc., has further learned from the attorney for the Bank that, subsequent to the date on which the subject aircraft was conveyed to the Red Baron Flying Club as bona fide purchaser for value, Mid-South Aviation, Inc. apparently made a number of payments to the said Bank as follows:

September 7, 1974	$1,307.50
October 3, 1974	$ 653.75
January 30, 1975 (credit)	$ 33.00
Total Payments Made	$1,994.25

For the convenience of the Court in examining this matter the following documents are attached hereto as Exhibits Nos. 3, 4, 5, 6 and 7:

Exhibit No. 3, an aircraft title report resulting from a FAA records search made for defendant, Red Baron Flying Club, Inc. by insured, Aircraft Title Service, Inc., on February 18, 1975.

Exhibit No. 4, a copy of the loan and security agreement executed by Mid-South Aviation, Inc. to the Bank of Hendersonville, Hendersonville, Tennessee on June 15, 1974 together with a copy of the note for which said loan and security agreement was given as security. The next page is the reverse side of the security agreement showing the recording thereof with the FAA Aircraft Registry Office in Oklahoma City, Oklahoma.

Exhibit No. 5, the security agreement apparently given by Mid-South Aviation, Inc. as a part of the scheme of the double financing of this aircraft as a part of the inventory of the said Mid-South Aviation, Inc. which said security agreement was given to Nashville Bank & Trust Company. The next page shows the reverse side of this instrument together with recorded information showing the filing of said instrument with the FAA Aircraft Registry in Oklahoma City, Oklahoma. This security agreement was apparently the one which was paid off by Mid-South Aviation, Inc. upon the occasion of the purchase of the subject aircraft by the Red Baron Flying Club, Inc.

Exhibit No. 6, this is a copy of the front and back of the security agreement executed with Red Baron Flying Club, Inc. by which security agreement they obtained the funds with which to purchase from Mid-South Aviation, Inc. the subject aircraft. The second page of this Exhibit shows the notation of the filing of the instrument with the FAA Aircraft Registry in Oklahoma City, Oklahoma. This particular security agreement was subsequently paid off and satisfied by the Red Baron Flying Club, Inc.

Exhibit No. 7, this Exhibit is a copy of the cashier's check which was the proceeds of the loan secured by the security agreement which is Exhibit No. 6 with the Citizen's Bank of Cookeville, Tennessee. As per the second page of the Exhibit, it shows the endorsement on the reverse side thereof of the Red Baron Flying Club, Inc., Mid-South Aviation, Inc. was apparently used to pay and satisfy the loan evidenced by Exhibit No. 5.

At the hearing of the cause, Mr. Bruce Carter, the Assistant Vice President of the Bank of Hendersonville, testified concerning the obligations and debt claimed by the Bank of Hendersonville in this cause of action. He testified that he had no personal knowledge of the transaction but was only testifying from the records available to him. According to these records, as of the 10th day of May, 1976, the outstanding balance due and owing upon the obligations held by the Bank of Hendersonville was $13,759.59.

Mr. Bruce Carter further testified that according to his records the Bank of Hendersonville was financing a number of aircraft as a part of the inventory of Mid-South Aviation, Inc. He further testified that the Bank of Hendersonville had filed a claim in Mid-South Aviation, Inc. bankruptcy proceedings and that he did not know whether or not any funds would be available for distribution as a result of said bankruptcy proceeding.

It is further stipulated by and between the parties that the Exhibits attached to this Stipulation may be treated by the Court as having been offered and received in evidence as if the same had been introduced and offered in open court and the copies may be substituted for the originals.

This _____ day of November, 1976

BANK OF HENDERSONVILLE

By: _____
W. Harold Bigham, Attorney

RED BARON FLYING CLUB, INC.

By: _____
Ernest Williams, III, Attorney